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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/759,530	01/16/2001	Mireille Maubru	05725.0828-00	2122

22852 7590 09/17/2003

FINNEGAN, HENDERSON, FARABOW, GARRETT & DUNNER  
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1300 I STREET, NW  
WASHINGTON, DC 20005

EXAMINER
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WANG, SHENGJUN

ART UNIT	PAPER NUMBER
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1617

DATE MAILED: 09/17/2003

17

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

09/759,530

Applicant(s)

MAUBRU ET AL.

Examiner

Shengjun Wang

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 09 July 2003.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-10, 12-18, 20-34 and 37-44 is/are pending in the application.
- 4a) Of the above claim(s) 13, 15, 23-29 and 37-44 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-10, 12, 14, 16-18, 20-22, 31-34 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

## Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

### DETAILED ACTION

Receipt of applicants' remarks submitted July 9, 2003 is acknowledged.

#### *Claim Rejections 35 U.S.C 103*

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 1-10, 12, 14, 16-18, 20-22 and 30-34 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sweger et al. (US 5,482,704, of record) and Babenko (US 6,277,893) in view of Saint-Leger (US 5,919,438, of record), and Murray (US 5,720,964, of record) for reasons set forth in the prior office action.

#### *Response to the Arguments*

3. Applicants' remarks submitted July 9, 2003 have been fully considered, but are not persuasive for reasons discussed below.
4. In response to applicant's arguments against the references individually, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986). Particularly, the primary references teaches the usefulness of the amphoteric starch herein in various cosmetic compositions, including shampoo (a type of cosmetic composition well-known in the art to containing wash base, or detergent), the secondary references teaches that the other ingredients

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employed herein are known to be useful in shampoo compositions. As discussed in the prior office action, considering the cited references as whole, the claimed subject matter would have been obvious to one of ordinary skill in the art.

5. Applicants are in error in stating "Sweger does not teach or suggest a detergent composition." Note, as stated in the prior office action, Sweger teaches broadly the usefulness of the amphoteric starch herein in cosmetic compositions. In fact, Sweger discloses a composition, which comprises substantial amount of detergent. See, example VI in col. 11, wherein sodium lauryl sulfate is employed in amount of 7%.

6. Applicants assert that Babenko teaches away from using washing base because Babenko states "these oil-in-water emulsions often contain well known or classical type surfactants or emulsifying agents which can cause skin irritation or allergic reaction and also may not be compatible with other constituents." (col. 1, line 28-32). The arguments are not persuasive. What has been discussed in the recited statement is some disadvantages of conventional emulsifying agents, and not the limitation of Babenko's cosmetic composition. (see, col. 1, line 34-46). Babenko does not teach or suggest that surfactants, or detergents may not be employed in his emulsion composition. In fact Babenko teaches "the oil-in-water emulsion of this invention are particularly useful in cosmetic and pharmaceutical or medicament composition such as creams, lotions, antiperspirants, makeup products, sunscreens, shampoos, and body cleansing products." (col. 5, lines 20-25). It would have been obvious to employ the emulsion of Babenko for a shampoo composition, and shampoo compositions contain washing base or detergents.

7. In response to applicant's argument that the examiner's conclusion of obviousness is based upon improper hindsight reasoning, it must be recognized that any judgment on

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obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the applicant's disclosure, such a reconstruction is proper. See *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971). In the instant case, the amphoteric starch herein is taught expressly for its usefulness in shampoo composition, and the other ingredients, cationic polymers, and anionic surfactants are well-known ingredients in shampoo composition. Therefore, a shampoo composition comprising the amphoteric starch and other well-known shampoo ingredients would have been obvious to one of ordinary skill in the art.

8. As to the remarks of picking and choosing, applicants' attention is also directed to *The Gillette Co. v. S.C. Johnson & Son, Inc.*, 16 U.S.P.Q. 2d 1923 (Fed. Cir. 1990). The court states "what was not known or suggested, however, was the composition that resulted from the combination of those components, and *its unique properties*." (Cited by applicants, emphasis added). In the instant case, there are no unique properties of the claimed subject matter, which are not obvious over the cited references.

9. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37

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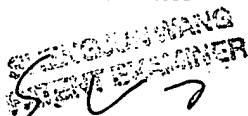
CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Shengjun Wang, Ph.D. whose telephone number is (703) 308-4554. The examiner can normally be reached on Monday-Friday from 8:30 to 5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Sreeni Padmanabhan, can be reached on (703) 305-1877. The fax phone number for the organization where this application or proceeding is assigned is (703) 308-4556.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-1235.

Patent Examiner

  
Shengjun Wang

September 11, 2003